

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION**

ROBERT CRUZ-RIVERA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:21-cv-00087-TWP-DML
	)	
"SECHRIST," Marion County Sheriff's Office;	)	
ROBERT JACKSON, United States Marshal	)	
Service; NICHOLAS LINDER, United States	)	
Assistant Attorney General; and DOMINIC	)	
DAVID MARTIN, Public Defender,	)	
	)	
Defendants.	)	

**ORDER DENYING MOTION FOR RELIEF FROM A JUDGMENT**

This matter is before the Court on Plaintiff Robert Cruz-Rivera's ("Cruz-Rivera") "Motion to Reinstate Civil Action" and supplemental "Motion" ([Filing No. 13](#); [Filing No. 14](#)).<sup>1</sup> Cruz-Rivera initiated this action against state and federal officials, asserting that his *Bivens* and Section 1983 claims were brought to vindicate his rights protected by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Cruz-Rivera was granted *in forma pauperis* status, and the action was screened pursuant to 28 U.S.C. § 1915(e)(2)(B). Because of a lack of jurisdiction, the Court dismissed the case, and Final Judgment was entered on August 11, 2021 ([Filing No. 12](#)). After he was convicted in his related criminal matter, Cruz-Rivera filed the pending Motion for Relief from a Judgment, seeking to set aside the Final Judgment and pursue his civil action. After he was sentenced in his related criminal matter, Cruz-Rivera filed the pending supplemental "Motion." For the reasons set forth below, Cruz-Rivera's Motion for Relief from a Judgment and supplemental Motion are **denied**.

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<sup>1</sup> While Mr. Cruz-Rivera has titled his Motion a "Motion to Reinstate Civil Action," his Motion is more appropriately characterized and analyzed as a Motion for Relief from a Judgment under Federal Rule of Civil Procedure 60(b).

## I. BACKGROUND

On May 21, 2021, Cruz-Rivera filed a Complaint and *in forma pauperis* motion ([Filing No. 1](#); [Filing No. 2](#)). The Court granted the *in forma pauperis* motion and screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) ([Filing No. 7](#)). In the screening Order, the Court noted,

[Cruz-Rivera] asserts that his *Bivens* and Section 1983 claims are brought to vindicate his rights protected by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Cruz-Rivera alleges that the Defendants conspired together to deprive him of his constitutional rights leading to a wrongful arrest, wrongful detention, and wrongful prosecution. All the events stem from Cruz-Rivera's alleged failure to register as a sex offender. He seeks compensatory damages, punitive damages, "injunctive relief ordering a full investigation 'request' by the United States Department of Justice," and a "temporary restraining order halting the criminal prosecution of the plaintiff . . . ."

*Id.* at 3 (internal citations omitted). The Court further explained,

It appears from the Complaint that Cruz-Rivera is bringing constitutional claims for wrongful arrest, wrongful detention, and wrongful prosecution that call into question the validity of the underlying criminal charges pending against him. . . . The underlying criminal charges have not been finally dismissed, and he has not been acquitted, so Cruz-Rivera has not yet obtained a favorable termination of the underlying criminal proceedings against him (see *United States of America v. Cruz-Rivera*, No. 1:21-cr-160-TWP-DLP). Therefore, his claims have not yet accrued, and his civil action has been brought prematurely. Thus, the Complaint is subject to dismissal for lack of subject-matter jurisdiction.

*Id.* at 4–5.

Consistent with *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022 (7th Cir. 2013), the Court gave Cruz-Rivera an opportunity to amend his Complaint. On July 28, 2021, an Amended Complaint ([Filing No. 9](#)), was filed. The Court screened the Amended Complaint and explained that it did not cure the jurisdictional issue of Cruz-Rivera's claims having not yet accrued and being brought prematurely ([Filing No. 11](#)). The action was dismissed for lack of jurisdiction and Final Judgment was entered on August 11, 2021 ([Filing No. 11](#); [Filing No. 12](#)).

On December 15, 2021, Cruz-Rivera filed the instant Motion for Relief from a Judgment, asking the Court to set aside the Final Judgment so that he can file a second amended complaint because his related criminal case has concluded in the District Court ([Filing No. 13](#)). Then on March 7, 2022, after he was sentenced in his criminal case, Cruz-Rivera filed a supplemental "Motion," asking that the Court allow him to use the full record of the related criminal case in this civil action ([Filing No. 14](#)).

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 60(b) provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. Pro. 60(c)(1).

"Relief from a judgment under Rule 60(b) is an extraordinary remedy and is granted only in exceptional circumstances." *United States v. One 1979 Rolls-Royce Corniche Convertible*, 770 F.2d 713, 716 (7th Cir. 1985). A party requesting relief from a final judgment is required to make a strong showing under Rule 60(b) because of the "strong presumption against the reopening of final decisions." *Connecticut Nat'l Mortg. Co. v. Brandstatter*, 897 F.2d 883, 885 (7th Cir. 1990).

Rule 60(b) "establishes a high hurdle for parties seeking to avoid [final] judgments and requires something more compelling than ordinary lapses of diligence or simple neglect to justify disturbing a [final] judgment." *Jones v. Phipps*, 39 F.3d 158, 162 (7th Cir. 1994).

### III. DISCUSSION

Cruz-Rivera asks the Court to set aside the Final Judgment so that he can file a second amended complaint. He explains that "[t]he criminal case that gave rise to the civil action concluded at the end of trial on September 22, 2021. *See United States v. Cruz-Rivera*, No. 1:21-cr-00160-TWP-DLP, DKT. 167." ([Filing No. 13 at 1.](#)) Thus, he asserts, "The claims in the civil action at bar have accrued . . . ." *Id.* at 2.

Cruz-Rivera is mistaken. The conclusion of trial in Cruz-Rivera's criminal case does not cure the defects of his civil action, which has been closed. The Court's screening Order explained that Cruz-Rivera needed to wait to bring a civil action until a cause of action accrued, *see Savory v. Cannon*, 947 F.3d 409, 414 (7th Cir. 2020), which would occur upon receiving a "favorable termination of his prosecution." *McDonough v. Smith*, 139 S. Ct. 2149, 2156–57 (U.S. 2019). The conclusion of the criminal trial did not solve Cruz-Rivera's problem because the trial did not end with a favorable termination of his prosecution; rather, the trial ended with his conviction, sentence, and his currently pending appeal.

The Supreme Court has held that claims such as Cruz-Rivera's may proceed only if there is a favorable termination of the prosecution. The Supreme Court has stated, "[i]f the plaintiff is ultimately convicted, and if the stayed civil suit would impugn that conviction, *Heck* will require dismissal . . . ." *Wallace v. Kato*, 549 U.S. 384, 394 (2007). The Supreme Court explained, "one element that must be alleged and proved . . . is termination of the prior criminal proceeding in *favor* of the accused." *Heck v. Humphrey*, 512 U.S. 477, 484 (1994) (emphasis added). The

Supreme Court further explained, "in order to recover damages for allegedly unconstitutional conviction or imprisonment, . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus . . . ." *Id.* at 486–87.


None of these conditions exist for Cruz-Rivera. His criminal trial in the District Court concluded with his conviction. He was sentenced to a term of imprisonment. He has appealed his conviction and sentence and that appeal is currently pending. Relief from the Final Judgment in this civil action is not warranted.

#### IV. CONCLUSION

For the reasons stated above, the Court **DENIES** Cruz-Rivera's Motion for Relief from a Judgment and supplemental Motion ([Filing No. 13](#); [Filing No. 14](#)). This civil action remains terminated and closed.

**SO ORDERED.**

Date: 4/25/2022



Hon. Tanya Walton Pratt, Chief Judge  
United States District Court  
Southern District of Indiana

Distribution:

Robert Cruz-Rivera  
Inmate No. 26948-017  
FCI COLEMAN MEDIUM  
FEDERAL CORRECTIONAL INSTITUTION  
P.O. BOX 1032  
COLEMAN, FL 33521